

# RULE-BASED RECONCILIATION

by

Howard Adelman  
© Howard Adelman

## Introduction

One can speak of reconciling different conceptions of God, Yahweh, the tyrannical deliverer of punishment for disobedience, and Elohim, a God of infinite mercy and compassion. We speak of reconciling man with God, humans with the natural world, man and wife, parents and children, two individuals<sup>1</sup> as well as the mind and the body, reason and compassion. Reconciliation is a term applicable to many fields where a schism exists, even academia. Thus, there are efforts to reconcile different disciplines and different approaches within disciplines, such as between history and political science and between political theory and comparative politics (cf. Browers 1993). In all cases of reconciliation, there is a concern with overcoming a schism in our thoughts and/or in reality.

In our focus, reconciliation refers to the restoration of fractured relationships, but at the larger political level rather than the interpersonal level. Further, we are not concerned simply with reconciling political differences, such as regions with a central government within a state. Our focus is on reconciling peoples that have been divided by violent conflict that has become such a central issue in the last few years.<sup>2</sup>

Even in such cases of violent conflict, I distinguish among three different types of violent conflict that divide peoples: a) inter-state wars between Iran and Iraq, Ethiopia and Eritrea or Pakistan and India; b) intra-state wars related to differences between regions, ethnic groups, ideology, religion, or even simply rivalries between two leaders seeking power; and c) government wars against part of its own population by attempting ideological or ethnic cleansing or even genocide where there are perpetrators and victims and the violence was overwhelmingly one-sided.<sup>3</sup> The model of reconciliation I develop is intended to apply to the second type above. In the case of the third type, I argue that reconciliation is neither required nor desirable between the leaders and the group targeted for expulsion or slaughter, though there is a need to reconcile the majority and minority groups. With respect to the first type, the “thick” model of reconciliation depicted herein is neither necessary nor usually applicable as such reconciliations are usually products of exhaustion or self-interest or some combination of both. Following inter-state wars, truth commissions, acknowledgement of responsibility, legal trials, redress and reconstruction of the national identity would be considered odd and ill-fitting. This chapter will try to explain why this is the case.

There are types of intra-state violent conflicts in which “thick” reconciliation is also usually inapplicable. In cases of leadership rivalry, thin reconciliation, akin to that between states in inter-state wars, is usually sufficient for there is no need to reconstruct

identities or to revise the national narrative. A simple agreement to stop using violence to sort out differences is usually sufficient.<sup>4</sup>

In developing a model of thick reconciliation, a number of questions arise. What are the constituent elements of the process of reconciliation to overcome the schism? Can wounds caused by division and destructive conflict be healed? Is “healing” the appropriate idiom for overcoming the divide? Under what conditions does actual reconciliation occur and achieve reduction in conflict? And what is the mechanism by which reconciliation has this effect? Is some form of forgiveness a necessary prerequisite for reconciliation?<sup>5</sup>

Further, I am concerned with reconciliation rather than reconciliation events<sup>6</sup>, events intended to initiate reconciliation by signaling such an intent, often unilaterally and without any pressure and frequently in a politically risky and novel way as when President Sadat of Egypt went to Jerusalem in 1978,<sup>7</sup> Reconciliation is the process of overcoming the schism not the trigger that may set the process in motion or serve as a catalysts to take negotiations over a final hurdle. Thus when the Sudanese President, Umar al-Bashir, publicly praised his long-time enemy, John Garang, leader of the Sudan People’s Liberation Movement on 8 October 2003 at the opening of the ruling National Congress Party’s general conference, congratulating the rebel leader for his courage, seriousness and true commitment and his movement for embracing the path of peace, this reconciliation event was intended to facilitate progress in the talks to overcome the hurdles over power and wealth sharing as well as over the territorial disputes over the Nuba mountains, the Southern Blue Nile and Abyei. Though this type of speech act is an important instrument of reconciliation, such reconciliation events are not to be confused with reconciliation itself.

But why the enormous emphasis on reconciliation at this time? One answer is that it is a reflection of the spirit of the times and an indicator of a new sensibility.<sup>8</sup> I leave this an open question. In fact, as shall be see, I leave most of the questions that I have asked above open. This chapter is only intended to construct a frame for further exploration and to provide a preliminary sorting out some confusions. The utility of the frame in examining such issues as forgiveness or the competition between truth seeking and criminal restorative justice must be left for another time and place.

In creating the framework, this chapter develops three different themes. The first argues that the conception of reconciliation endorsed is rooted in different visions of the political order. We set out four different visions of the polis and four corresponding concepts of reconciliation. We endorse only one of them, recognizing that the model has to be adapted to each particular situation.<sup>9</sup> Secondly, we argue that the one we endorse is made up of four different elements: recognition, restorative justice, redress and reconstruction. Each of these categories has three dimensions. Part II of this chapter explores those four categories, introduces some of the tensions between them, and the different dimensions of each. Part III then raises some of the divisive issues over reconciliation, such as whether the quest for justice must be sacrificed in order to foster peace, or whether forgiveness is an essential component of reconciliation. We only delve

into the latter question, and then only to indicate how the framework developed will be of use in answering such questions.

My central argument is that tensions within the conception of reconciliation appear to be irreconcilable only because they have not been informed by the appropriate conception of the polis modern reconciliation is intended to serve. Many misconceptions of reconciliation are rooted in confusing early models of a polis and imposing that vision on the modern conception. At the core of modern reconciliation is a process intended to foster future<sup>10</sup> peaceful coexistence of parties that have been divided by war but NOT to reconcile parties where one has sought the extermination of the other. Further, the goal is not to bring about harmony, but only to eliminate violence as a method of resolving differences.

In this chapter, I argue that the modern conception of reconciliation outlined here should be the one underlying contemporary efforts. This is a prescriptive as well as analytic thesis. However, I do not argue that other forms of so-called “reconciliation” are irrelevant. Quite the reverse! I argue that they are relevant in three different ways. First, understanding the alternative senses of reconciliation is critical to defining the goals of contemporary reconciliation efforts in distinction from those that have been the presumption of other efforts, particularly in the past. Secondly, because efforts at contemporary reconciliation are attempted in contexts in which the premises of other conceptions of reconciliation were often previously prevalent, some of the mechanisms of these other traditional forms of reconciliation are perceived to be useful by providing important mechanisms for achieving that reconciliation. I suggest they are more often involved in undermining the modern liberal conception of reconciliation. Third, this is a thick or strong theory of reconciliation for it not only argues for one conception of reconciliation versus others, but claims that the underlying basis of violent conflict can often be correlated with premises of these other very different conceptions of reconciliation. Thus, the process of reconciliation is not just about replacing violent conflict, but violent conflict may in part be about different *fundamental* conceptions of reconciliation that do not accept the premise of modern reconciliation that includes the other as a full and equal member of the body politic.

## **Part I – Conceptions of the Polis and Different Conceptions of Reconciliation**

### **A Four Categories**

Most classical competing conceptions aim at providing harmony in a society as the means of avoiding violent conflict. They provide very different premises and conceptions of peace and order that rule out the modern conception of reconciliation. The essential difference is that, in modern reconciliation, the opponent is included in rather than excluded from the body politic. In this section I merely set forth the differences between what I term Restorative, Revolutionary, and Counter-Revolutionary versus modern Liberal Reconciliation.

The conception of reconciliation in terms of the body politic comes in two versions. In one version, the body politic has a natural organic unity; disruptions of the body politic are the result of introducing foreign objects into it. Reconciliation comes from identifying that foreign element and expelling it from the body politic to restore a natural unity and introducing preventive measures to inhibit its reintroduction. The outside element is akin to a disease or a parasite that needs to be exterminated and the body politic can then once again restore itself to a healthy balance. The restoration model is premised on a radical division between citizen and foreigner, citizen and traitor, citizen and subversive, between us and them.

In another version of reconciliation rooted in the body politic, the unity of the body politic is established ostensibly through engaging the will of all its members in a process of decision-making. The object is to manifest a general will. In this version of reconciliation, populist or participatory democracy is one way to prevent conflicts from turning into violence even if the revolutionary democracy is first established through violence. Allegedly, those who want to relegate decision-making exclusively to themselves must be eliminated, although the process of elimination and arrogating the rights of decision-making to the collectivity ends up resurrecting the ghost of the murdered king through the elevation of the singular individual as the embodiment of that general will. In the first vision of the polis, an outside element may set off an internal response within the body politic itself, so that one part attacks another akin to an auto-immune reaction; this second model concentrates on eliminating the cancer from within or suppressing the auto-immune reaction whatever the outside source of the stimulus. In the new revolutionary order, to prevent the revolution from once again reverting to violence, the members of the body politic are ostensibly restricted to those who cannot be suspected of monopolizing political power, influence and formal authority so that all the authentic members of the body politic will be able to participate and exercise their will. The result is that the authentic representatives of the general will are reduced to an oligarchy or even a single dictator as the thermidor takes up the task of eliminating all internal opposition..

In the milder variation of this version of radical or revolutionary reconciliation, the body politic is differentiated from institutions in the civil society and the family. Participatory democracy only applies to decision-making that affects the body politic as a whole. In another variation, collective decision-making is applied to issues of social and interpersonal conflict as well. In either case, the unity of the body politic is established through repetitive exercises of will in dealing with conflicts. In this version of reconciliation, as distinct from that of reestablishing a natural pre-existing organic unity, the source of problems comes from within, from those elements who ostensibly would exclude key parts of the body politic from the decision-making process, power and influence who must in turn be excluded.

The above two versions of reconciliation focus on retaining the unity of the body politic. The polity does this either through ensuring a natural uniformity or through a revolutionary participatory democratic process. The next two versions of reconciliation are based on like-mindedness rather than on unity, on establishing a basis for agreement

rather a comprehensive unity that is either substantive or procedural. In substantive like-mindedness (as distinct from substantive unity) a common set of ideas or an ideology are held by an elite who inculcate the rest of society in those norms; those who dissent are not considered part of the polity. The other version of like-mindedness based on process rather than substantive agreement concerns itself with external rules rather than internal thoughts, rules that set the boundary conditions for behaviour to prevent violent means of resolving conflicts.

The fundamental theories of reconciliation are set forth in the following table.

### *Fundamental Types of Reconciliation*

- |                              |  |
|------------------------------|--|
| A. Unity in the Body Politic | 1. Restoration of Organic Unity<br>2. Formal Unity through Participatory Decision-Making         |
| B. Like- Mindedness          | 3. Substantive through Shared Basic Ideas and Values<br>4. Formal through Binding Boundary Rules |

Clearly, these four basic categories of reconciliation are ideal types and different actual processes of reconciliation may be based on combinations of ideal types, but not without tension.

### **B. Greek Versions**

These four versions of the polis were all extant in the Greek era. Though modern versions are not exactly the same, the basic premises are. All four versions attempt to answer the same question. How do we avoid violent conflict or the use of coercive force in a *polis*? Once conflict breaks out, how do we bring the parties back together so that they do not resume fighting? One dominant theme of the Greek message is that you create a *polis* that is harmonious by ensuring that the population has the same values, outlook and practices. Homogeneity is a prerequisite to harmony and peace. If the inhabitants all belong to the same ethnic group, speak the same language, hold the same values because they have the same heritage, and know their place in the social order, there will be no conflict. That is why Erechtheus ‘to whom the life-giving earth gave birth’ could be an early legendary king who established Athens as a ‘well-founded’ city, for he was ‘born of the soil’, was *autochthonous* and not an immigrant (*Iliad* 2, 546ff).

Harmony can depend upon common values and fixed places in the social order. Strangers and foreigners disturb that order. Is it any surprise that Athene, who guides Odysseus secretly to the palace of King Alcinoos in the land of the Phaeacians, cautions: “[S]ay not a word as you go, and do not look at any man, or ask him questions; for the people here cannot abide strangers, and do not like men who come from some other place.”<sup>11</sup> Harmony and fixity of the social order preserve the peace is one message.

There is another version of a harmonious polis. In Greek, *stasis* (στασις) is translated as the reverse of stability; *stasis* means civil war, sedition or revolution. In the

Athenian *participatory* democracy, fixidity was perceived to be the source of conflict rather than harmony. Under the initiative of and urged on by Pericles, in 450 BCE the citizens of Athens, as one of their first collective decisions, decided to restrict citizenship only to those descendents of parents who were *both* citizens. In the effort to create a harmonious state, the populace determined that strangers and even the children of men or women married to strangers, threatened the unity, harmony and sense of loyalty necessary to a citizen.<sup>12</sup>

In Aristophanes' play, *Acharnians*, the farmer-citizens interrupt and abuse any speaker who did not promise peace and an escape from the taxes of war. To its critics, participatory democracy provides an erratic, quirky, and unpredictable process, lacking any sense of due process and institutional memory, the foundation for continuity and a sense of precedent in making judgments. Even worse, some populist "democracies" have been exemplary in fostering a singular and homogeneous memory that reifies a sense of a unique indivisible and often superior nation.<sup>13</sup> At its extreme, participatory democracy is either cruel to those who are perceived as aggregating power to themselves or becomes a sham and a fraud as one ruler uses the cover of an apparent democracy to accumulate and monopolize all power.

If neither a fixed natural and organic social order with a divine being at its head and serving as its model, nor a participatory democracy under the rule of the will of the people who share a common identity, is considered adequate, Plato proposed a third model. In Plato's vision, as in the first model, everyone is in service to a higher being or order of excellence and perfection; to the degree the model fails, the polis is undermined by vice and meets its own destruction. Further, everyone who was a citizen had to have two Athenians as parents. However, Plato's third way envisioned an established order based on the inherent virtue of each person and not on the inherited order of society based on property and wealth nor on the will of the people with a common heritage. Who provides order – an oligarchy of the rich, a democracy of the many and the multitudinous poor but with a shared background, or the rule of the wise? Plato opted for the latter. God was not the most powerful coercive force but the epitome of virtue and the source of goodness. (*The Republic*, III.2, 280c)<sup>14</sup>

However, Athens' most heroic king, Theseus, did not fit any of these three molds. He was a foreigner according to Plutarch so could neither participate in an organic given social order nor in a populist democracy rooted in the will of the indigenous population. Though a child of the Aethenean King Aegus, he was the daughter of Aethra of Trozen (or Troezen on the shore of the Saronic Gulf opposite Athens) whom Aegus had once seduced. Unlike Erechtheus who was a king, Theseus was, as Aristotle said, the first Athenian inclined towards democracy who brought the rural areas under a singular law and authority in Athens. He was a constitutional rather than a participatory democrat who did not know his place as a foreigner or everyone else's place in the social order, for he established a democracy and the rule of law when he became king, taking the title of commander of the army and guardian of the law rather than ruler. As Plutarch wrote, his tomb became a sanctuary for runaway slaves, the poor and the downtrodden, those who had no entitlement to citizenship even in a populist democracy (*Lives*, para. 36).

As a foreigner who did not know his place or the place of every inhabitant, Theseus lacked memory instilled deeply through tradition; on his return from slaying the bull of Minotaur, the devourer of Athenian children who lived in the center of the labyrinth in Crete, he forgot to replace his black sail with a white one to signal his triumph to his father, King Aegus. Thinking the Athenians had been defeated, Aegus, threw himself off the Acropolis in despair. Theseus as the only son then became king of Athens. Eventually, this man of the people and guardian of the rule of law was overthrown in a coup by the nobles who distrusted this stranger and constitutional democrat. When he sought asylum under King Lycomedes of Scyros, he was thrown off a cliff by that same king to join the masses below on the grounds that he had never respected his high station anyway.

Aristotle adopted a variation of the solution of Theseus. As clearly Plato's best pupil but an immigrant to Athens himself who failed to inherit the academy after Plato died, most likely because he was a foreigner, it is no surprise that Aristotle did not adopt Plato's view of a homogeneous society 'by nature'. However, he also did not adopt Plato's vision of a rigid hierarchy of classes organized in the right proportions and led by a singular mind among the ruling class. Instead, the rulers are governed by a sense of justice that inculcates habits of respect towards others. Violence is avoided by the *process* of seeking a common end and not by establishing a utopia. Justice is the virtue of regulating conduct towards another and not just oneself to create a community necessary for the preservation of the polis. It is not the unity of the ruling class and the relegation of different classes in an ethnically homogeneous population to their respectful places that ensures violence will be avoided. Instead, culture (not defined as the reification of a presumed given unified culture) is the quest to create a common narrative, not of origins but of the path traveled and the direction in which the polis should be headed. That quest is acted out and the developing political ethos revealed in music and dance, literature and religious festivals.

Conflict was not resolved by the established consensus, or by the consensus building of participatory or populist democracy and redistributing wealth<sup>15</sup>, or by the rule of the wise, but through friendship (*δμοσυνία*), literally "together-mindedness", a system that required the members of the polis to share the same *process* of reasoning as a prerequisite to living under the rule of law. Civility became the basis for avoiding violence. All men are rational. Each man had a mind (*νοῦς*), *nous*, and men of shared mind can prevent conflict. "[I]n the best state he [the citizen] is one who is able and willing to be governed and to govern with a view to the life of virtue." (*Politics* III:12, 1284a1-3) The process of reasoning rather than the content of thought allowed the production of a common set of rules to instill the habits of peace in the citizens and set the boundaries that outlawed behaviour that would contribute to violence. For Aristotle, when inherited patterns fail, when enmity of the rulers by the masses becomes so bitter that the collective body of the polis does and cannot recognize a single wise leader, humans retreat into their own personal thoughts and act out in the public sphere through resentment rather than reflective thought translated into actions. The discordant passions rule and are expressed in anger, hatred and strife. Instead of accepting partial

responsibility for the events underway and their own inaction, fault is projected onto a scapegoat. To keep the passions in check, to ensure that temperance, courage and persistence reign supreme under wise direction (*Politics* VII:15, 1334a), a constitutional regime under the rule of law is a prerequisite.

The problem of overcoming passions and resentments that eat us up, that literally *arrest* the life creating processes and put us into *stasis*, requires a process that leads to vomiting up the daemons devouring our insides and preventing our minds from ruling the body and coming to a like-mindedness with another. For Aristotle, a healthy mind requires that the body politic have a process of getting rid of enmity, of expiating resentments so that we can take responsibility for our own actions so that they can be guided by thought. It is Aristotle who first connected the rule of law model of the polis with a therapeutic healing model built on extruding and excluding resentment.

Reconciliation becomes an issue when people believe that conflict is rooted within the mind and soul and not in envy of material goods and power. When the disease is seen to lie in our minds and hearts, and the resolution requires a degree of *like-mindedness*, then a process of reconciliation that does not reside in an established order or an established fraternity of people is necessary. However, one route is not through the rule of law but through an enforced reconciliation in terms of a common set of ideas; people then get sent to re-education camps. Reconciliation is then based on Love of the Truth with a capital “L” and a capital “T” and the most tyrannical of orders is created in the name of unity.

However, at its core, love is not directed at Truth but towards other people; politics is not possible without *philia* (φιλία), friendship. Through socialization, people learn what is shameful. Reconciliation is the recovery of a sense of friendship and a set of common values and rules that allow for reciprocity. Without *philia*, there can be no lasting peace, only enmity and endless strife. While not agreeing with Plato concerning either the rigid ethnic homogeneity of society or the strict hierarchical ordering of classes into their proper proportions led by a ruling class unified in mind, Aristotle did adopt the idea of justice as reconciliation of the various elements and the vision of a political order based in friendship among the citizens.

Friendship does not require communism and the sharing of everything. Quite the reverse! Enmity results from imposing burdens on personal friendship that personal friendship cannot bear. The political economy of friendship based on utility requires paying everyone his rightful due, whether wages, interest on investment, security, or public recognition. “[T]his is the origin of quarrels and complaints – when either equals have or are awarded unequal shares, or unequals equal shares...awards should be according to merit for all men agree that what is just in distribution must be according to merit” (*Nicomachean Ethics* V:1131a, 22-6, tr. W.D. Ross). That is why, “the best political community is formed by citizens of the middle class...in which citizens have moderate and sufficient property...The mean condition of states is clearly best, for no other is free from faction; and where the middle class is large, there are least likely to be factions and dissensions” (*Politics* IV:11, 1295b35-1296a9).



**C. Summary of Models**

The models of stability can be summarized as follows:

Basis of Stability

Category	Legend		Philosophy	
	Erechtheus	Pericles	Plato	Theseus/Aristotle
Membership	Homogeneous autochthonous	Heterogeneity source of unity	Like-Mindedness Of Rulers	Of Citizens
Law	Natural Law	Positive Law	Rule of Wise	Conventional Law
Political Economy	Oligarchy of Wealth	Democracy of numbers	Aristocracy of Virtue (rulers denied private property)	Democracy of Virtue
Restoration	Reestablish natural order rule of the few or the one	Impose Majority Rule	Establish New Utopian Order - rule of the wise	Establish Rule of the Middle

Now it should be clear from the above that the only model that builds in a proper process of reconciliation that includes the other is the Aristotelian one. Reestablishing the natural order, imposing the rule of the majority, creating a utopia, all do not entail a reconciliation that includes the other. Quite the reverse! In their extreme forms, they are out to eliminate the other. Only a state of equal citizens in which the virtue of each is to be developed under a set of laws that are not simply said to be given nor imposed by force nor set aside by a ruler said to be above the law requires a modern reconciliation process. In such a system, law is neither given nor a manifestation of power; rather, the grounds of law reside in the acceptance by the community of social conventions that recognize a set of procedural rules of vesting a representative group of the citizens with the power to change the law in accordance with those rules.

The process of nation building, as we now call it, after periods of protracted strife, is intended to build a society of equal citizens governed by the rule of law with a healthy middle class and a large sphere of public discourse that is not driven by envy or resentment but is organized to permit individuals to pursue their own happiness while at the same time also providing the foundation for the mobilization of collective action for the sake of the common good in order to avoid or overcome violence or resist violence from the outside.

**D. The Roots of Strife**

Non-recognition of the Other	Lies and language Inversion	Depriving Individuals and Groups of their Voices	Create a Culture of Forgetfulness
------------------------------	-----------------------------	--	-----------------------------------

Absence of Rule of Law	No Accountability	Some people above the Law	Absence of Accepted Norms
Deformed Economy	Absence of Compensatory Scheme for Losses that are not an Individual's Responsibility	Absence of Institutional Protections that Prevent Unfair Wealth Accumulation	Lack of Protective Mechanisms to Ensure those in Need Receive Help
Deformed Political Culture	Anger and Resentment	Public Expression of Passions	Immobility of the Community

Given the above depiction, it should be no surprise if the analysis is intended to endorse systems and schemes of reconciliation that use those most hurt and deprived to re-establish the general principles of a polis built on a constitutional law model and do not simply deal with the complaints and plight of those who were hurt or damaged. Reconciliation has a political agenda. To the degree such efforts fail, the measure is not primarily from the perspective of those who were injured but from the perspective of rebuilding a society.

## Part II - The Characteristics of Rule-Based Reconciliation

### A. The Overall Conceptual Framework

Reconciliation fits within a larger set of categories and concepts all focused on bringing together societies or individuals that have fallen out as the result of intense and often violent conflict. As stated earlier, I am not concerned here with inter-personal reconciliation. Further, although there are clear implications in this analysis for social reconciliation focused on issues related to particular institutional abuses of groups and individuals,<sup>16</sup> I will not deal with them here. My focus is on intra-state, primarily but not exclusively inter-ethnic, reconciliation following violent conflict.

There are four essential categories that are considered prerequisites, conditions or correlates of reconciliation: recognition, restorative justice, redress and reconstruction. The degree of reconciliation will be directly correlated with the degree to which there is recognition of truth<sup>17</sup>, restorative justice, redress and reconstruction. Without these prerequisites being at least partially fulfilled, there will be no reconciliation. If they are fulfilled only partially, reconciliation will remain at best partial.

The conditional relationship between recognition, restorative justice, redress and reconstruction is a systematic one. Each category builds on and is dependent on the fulfillment of the previous category. Thus, as a minimum condition, “A willingness to reconcile is dependent on people’s ability to cope with and process this knowledge of what had happened.”<sup>18</sup> Knowledge alone, however, is insufficient for full reconciliation. There must also be restorative justice for which recognition of the truth is a first condition.<sup>19</sup> For example, in the trial of Maurice Papon, “testimony after testimony regarding individual victims confirmed the role of the Bordeaux administration and its ancillary services in the implementation of the Final Solution. Surely establishing this historical truth in a court of law – a truth fudged in the Paul Touvier trial – was a symbolic precondition of that renewal process.”<sup>20</sup> Next, restorative justice as well as facing the truth of what happened are both conditions of redress, but are insufficient of themselves to achieve reconciliation without redress. Finally, as a condition of full reconciliation, the demands of truth, restorative justice and redress must all be fulfilled in such a way that the dignity and respect for individuals and groups is restored and a sense of social cohesion is reconstructed. Recall that the sign behind the commissioners in the South African Truth and Reconciliation Commission hearings read: “Truth: The Road to Reconciliation”. Though truth provides the necessary first precondition of reconciliation, it is not a sufficient condition. The sign did not say that justice or redress were preconditions as well, but should have.<sup>21</sup> This paper suggests that this inadequacy was a key source of the partial failure of the South African Commission.

Demonstrating that truth, restorative justice, redress and reconstruction are all related to reconciliation is one thing. The harder task will be to demonstrate that they are all necessary and jointly sufficient conditions of reconciliation. The even harder task will be to show that these conditions are *systematically* related to reconciliation; that is, recognition is a condition of restorative justice, recognition and restorative justice are

necessary and jointly sufficient conditions of redress, and recognition, restorative justice and redress are jointly necessary and sufficient conditions of reconciliation.

## **B. The Three Dimensions of Each Category**

Each of these categories – recognition, restorative justice, redress and reconstruction - has three different dimensions. Recognition entails, on the one hand, establishing the facts of what actually happened in the past, the truth in Truth and Reconciliation Commissions. What happened includes an analysis of the nature of violations, their causes and extent as well as the conditions, context, motives and rationale that resulted in the violence. Secondly, recognition entails giving voice to the victims so that empathetic and not just objective understanding is facilitated; it is not enough to try people for their crimes; the voices of the victims must be heard to validate both their suffering and their status and to allow the domain of the forgotten and repressed to enter the domain of public acknowledgment of the victimization.<sup>22</sup> Finally, recognition has a third aspect related to working towards establishing a common memory to empower a society in dealing with future challenges and to facilitate creating a system of common norms that define unacceptable behaviour.

Restorative justice also has three dimensions. First, it entails holding the perpetrators of crime accountable for their actions. Secondly, it sets a precedent and lets other members of society and/or the world know that perpetrators of crime will not escape from their crimes with impunity. Thirdly, restorative justice restores the sanctity of the rule of law for the future, for each of the court cases in which perpetrators of crimes are found guilty establishes not only a set of normative standards but the rule of law itself within which agents must operate.<sup>23</sup>

The three dimensions of redress involve, first, reparations<sup>24</sup> or compensation for damages and harm done in the past<sup>25</sup>, monies to help carry out social transformation and institutional reforms in the present to inhibit the recurrence of the destructive actions, and shifting the focus in the future from power issues to issues of needs. I have deliberately excluded issues of psychic healing from this level.

Reconstruction itself has three dimensions. First there is the process of psycho-social healing through the release of deep seated hatreds and enmity without targeting the other.<sup>26</sup> Second, strengthening the process of public discourse and deliberation is part of the reconciliation process. Finally, reconstruction entails mobilizing the community to act together in the future in constructive ways.<sup>27</sup>

The conceptual framework can be represented as follows:

### C. The Systematic Characterization of Reconciliation

<u>Category</u>	<u>Correct the Past</u>	<u>Change the Present</u>	<u>Create a Future Community</u>
Recognition	Truth & Closure	Give Voice to Victims	Work to Create a Common Memory
Restorative Justice	Hold Perpetrators Accountable	Set Precedents - no Toleration of Immunity	Establish Norms for Future Conduct
Redress	Compensation for Harm and Losses	Finance Institutional Reform	Refocus on Needs vs. Power
Reconstruction	Psycho-social Healing	Strengthen Public Discourse & Deliberation	Mobilize common community action

### D. The Conceptual Framework and Actual Reconciliation Efforts

Different commissions have stressed different aspects of the above set while downplaying other aspects because it was felt that, for example, an emphasis on holding perpetrators of crime to account before courts of law would impede getting out the full truth of what happened and the healing process of reconciliation. This chapter does not argue that such efforts at partial reconciliation are wrong ethically or strategically. Rather, in making such compromises in the face of concrete historical and political circumstances, the effect will be a failure to achieve full reconciliation. In other words, in the effort to achieve at least some partial reconciliation, full reconciliation may have to be sacrificed. However, too much emphasis has been placed on the pragmatics of compromise and not enough on the criteria and the underlying principles that should govern such compromises

Within any one of the categories, different commissions stress different aspects; thus, a Commission on Truth and Reconciliation might emphasize the healing process of the commission, and will try to conduct itself accordingly, while largely ignoring the public discourse and future mobilization aspects of reconciliation. Critics then criticize the choices and priorities stressed by a particular commission in terms of the sub-categories that have been downplayed or left out. While noting and providing a framework for identifying and classifying different types of commissions in terms of the above categories, these various rationales and critiques merely provide a sense of the limitations of the perspectives of any of them

## Part III – Disputes and Conflicts Among Components of Reconciliation

### A Recollection

Recollection is the fundamental ground of reconciliation based on revelation of what happened in the past, testimony by victims of its occurrence and acknowledgement

or official sanction of the narrative. Recollection begins with testimony. Testimony is speech intended to help reproduce or represent an original event. This is usually how it is depicted as being used in courtrooms. It is certainly how most historians believe they examine the evidence of the words people left behind – as fragments to discern the facts by an impartial spectator in order to provide an objective rendering of what happened.<sup>28</sup> History is concerned with appearance as truths. Appearances are truth. The objective is to discern accurately that which once appeared.

However, the objective is then to find the past beyond appearances, the past that no longer appears, to fix the past as a Truth beyond appearances. In this way this so-called rootedness in appearance turns into the age-old obsession of philosophy with the Truth beyond what appears as part of a larger vision of philosophers since the Greeks. Appearance may occur first in the existential order of experience, but Being and Truth that lie beyond Appearance belong to a higher order or are the conditions of appearance in this world. Truth belongs to a higher rank of Reality. In this inversion, factual truths exist and appear only to the extent that they are heard in testimony.<sup>29</sup>

As Hegel says in the Preface to the *Phenomenology of Spirit*, the elements and content of philosophy are:

not the abstract or non-actual, but the *actual*, that which posits itself and is alive within itself – existence within its own Notion. It is the process which begets and traverses its own moments, and this whole movement constitutes what is positive [in it] and its truth. This truth therefore includes the negative also, what would be called the false, if it could be regarded as something from which one might abstract. The evanescent itself must, on the contrary, be regarded as essential, not as something fixed, cut off from the True, and left lying who knows where outside it, any more than the True is to be regarded as something on the other side, positive and dead. Appearance is the rising and passing away *that does not itself rise and pass away* [my italics], but is ‘in itself [i.e. subsists intrinsically], and constitutes the actuality of the movement of the life of truth. The True is thus the Bacchanalian revel in which no member is not drunk; yet because each member collapses as soon as he drops out, the revel is just as much transparent and simple repose. (para. 47)

Truth is not the Abstract Past reified into a fixed Truth divorced from the present and the future in which a concern with appearances is sacrificed in the name of a Truth beyond Appearance. The most important fact is that Truth as Truth never appears and allows us to come face-to-face with it. So do we worship Truth beyond Appearance? Or do we say this too is an illusion. Our concern must be on the truths that appear and how they appear and disappear. Spirit, the invisible, exists to appear and for appearance. If we worship the invisible, it is because we want it to become visible, for the “life process is there for the sake of appearances.”<sup>30</sup>

This insight is truer of the auditory than the visible. Because the auditory never literally appears, or, to be more accurate, it disappears as soon as it is uttered. Unless it is recorded! The auditory always remains invisible unless it is translated into another form.<sup>31</sup> Most speeches are made simply to be heard. However, the highest form of speech is uttered so that it can be recorded, so that it can appear again and again. It is uttered to

allow the invisible to be visible. Thus, the function of testimony is to allow what once appeared to appear again, not simply to establish what happened. A speech act addresses an audience as part of a social phenomenon and does not simply relay facts. It is, in fact, more present and future than past oriented, more interested in communicating to others in a community and establishing a common communal memory than representing the past as it actually happened. Studying the past in and for itself is not the real intention; rather the past is studied as the ground of a trajectory into the present and the future. It is only by securing the greatest and most comprehensive truth about that past that it can serve these days as a solid ground for that purpose, but the truth about the past is insufficient, and recalling the past for itself is just to misunderstand the nature and function of historical writing. That is precisely why the representation of the past does not include the comprehension of all that happened or all the facts, but only the selection of those facts to fit into a story line.

History is often based on the testimonies of those beyond the grave the veracity of which cannot be checked by the credibility and demeanor of the testifier. In the aftermath of the Holocaust, such testimonies gave rise to a genre all their own. But these are but the extreme versions that epitomize the character of all testimony. After all, historical events are absent. The retelling, even by someone who witnessed or even just experienced the events first hand, is itself a re-presentation. Hesitation is the mark of the traumatic moment that separates the moment between the occurrence of the event and the ability to translate it into testimony.<sup>32</sup> Someone who witnessed or experienced events went through a number of experiences at one and the same time. He or she has to order the events in a particular contextual relationship to one another. What the person providing that testimony or relaying the testimony of others cannot do is invent “facts” which a writer producing historical novels can. But writers of fiction and purveyors of truth both give shape and meaning to the events they talk about.<sup>33</sup> This is accomplished by weaving the agents, the setting and the conditions into a cohesive narrative structure that invests the events with particular significance. That context and coherence are shaped by those to whom the story is being told and for whom it will be left as a legacy.<sup>34</sup> These are the factors that determine the form selected to tell the story, a form that will embrace a particular combination of argument, plotment and ideology.<sup>35</sup>

Thus, the re-telling of a collection of events as a story is not meant to represent what happened and only partially to establish the truths of what happened to prevent denial or outright lies.<sup>36</sup> For the opposite of truth is a falsehood. In the immediate aftermath of a cataclysmic event, this may be an issue, to establish truths and deny denials, to see the facts and forbid the lies, but in the longer term, the facticity of the event is not central to remembering based on testimony, especially when events are transformed into ritual re-presentations. For the first function of construction of a story is to allow those who hear it to remember the tale of which each event forms a part. The testimony is targeted at memory.<sup>37</sup> For the possibilities – not the actuality of a single interpretation – facilitate memory, not the facts. Try memorizing a telephone list or a sequence of meaningless facts. Testimonies are speech acts that allow us to recognize and give significance to an event in the future.

Is testimony offered to ensure justice for the perpetrators of a dastardly deed or deeds? Again, I think this or motives of retribution or restitution (compensation) may be issues of immediate concern, but these types of events and the testimony surrounding them go far beyond what can be captured by a simple analogy to a trial. Wiewierka<sup>38</sup> says that testimony is an act of speech, an address that calls for an audience as part of a social phenomenon. The first point of testimony is to establish what the common memory will be. In fact, the primary function of testimony is the future; testimony is not primarily past oriented. The first function of testimony is to create a community founded on memory. The witnesses talk to allow us to talk to ourselves.<sup>39</sup>

The testimonies of those beyond the grave, the evidence left of those who did not survive, but who knew the Truth and can never claim justice, are often denigrated because they cannot be cross-examined. Few have been used by historians, and fewer still have gained public recognition. But I think this is to misunderstand their role. Because once testimony is characterized as a speech act, and the dead cannot really speak to address an audience, then such traces will inevitably be forgotten. But what if the testimony they gave with their lives is not a speech act at all in any Aristotelian sense?

Let us recall what Aristotle said about speech acts. A speech act is an expression of intent to be followed by a performance of what was expressed as intended. "I intend to stop taking drugs." "I will stop all acts of terror." One feature of a speech act is that it is belied when the utterer does not follow through with the performance (barring circumstances beyond his control.) But this is the fundamental lie of a speech act. The speech act presumes that the speaker is an autonomous agent fully in control of his actions and capable of producing the results. But this is generally not true of the drug addict or alcoholic, nor of Arafat caught up in a pattern of dissimulation and always trying to play all sides of the fence so that he cannot deliver what he states as his intention. In a speech act, an utterer subscribes to the expression of the intention. But he may be fooling himself or herself (the alcoholic or addict) or fooling others (the dissimulating politician or seducer). But there is a more fundamental fraud behind this, a philosophical fraud, one that says that we are all autonomous free individuals capable of acting of our own free will to carry out what we say and utter. That is not to say that we should not be held accountable for both what we say and do. It is simply to say that speech acts are not individualistic expressions of autonomous rational agents, but communal acts in which: a) we must be held accountable; and b) we must be helped to ensure that we carry out what we say we want to do.

Let me put it another way. An observer looks on and asks about the integrity of the expression of intent. Does the observer look to see whether the deeds follow from the words? Or instead of looking at whether the facts follow from the words, the observer looks to see if the words match the facts. Is the utterer capable of delivering on the utterance? Has the utterer demonstrated a past record of performance in which, whether a drug addict or a slippery politician, he or she has delivered on the intent? The fact is if we are going to help ourselves and/or the utterer of the intent, then in creating a new communal future, we have to check on whether the words match past deeds and not wait to see if future deeds follow from the words before we can measure the truth value.



What has all this to do with the voice beyond the grave? Only this. The greatest testimony they give in their inability to speak. In their inability ever again to utter words which say "I will..." or "I intend..." the victims testify that they were victims of believing, or others believing, that deeds would follow from words. They were victims of a mass amnesia, of forgetting the horrors of which humans are capable of committing, and of the meager resources we have to deal with political lying and crimes against humanity. That means that the testimonies from beyond the grave are the testimonies of their dead bodies, of the facts and circumstances of their deaths of which the words they left behind were but traces. They did gain public recognition for their bodies. The circumstances of their deaths spoke far louder than the trace words they left behind.

In this version of the first and fundamental stage of reconciliation, the recollection is not only expressed to prevent impermissible lies and to allow victims to articulate and express what happened, but to ensure acknowledgement of both fact and responsibility that is often accomplished through an official apology.<sup>40</sup> In reconciliation following interstate wars, in the name of ending the violence, the first dimension is usually the only one put in place, and usually in different versions by each side, thus permitting if not ensuring recurrence in the future. In contrast, in intra-state wars if the civil war is to be truly ended, all three elements have to be in place because the reconciliation process must be emotive as well as cognitive to sustain significance and attention. The narrative developed must focus to create meaning that will facilitate ready recall of the past and motivate action in the future favorable to reconciliation because the memories will be embedded in the bodily selves of the members of that society. In reconciliation, emotions will be evoked of a specific kind. Nationalist exclusionists use the memory of the past to provoke distrust, anger, and revenge against the other. In the memories evoked in the process of liberal reconciliation, the clear intention is to substitute resentment, rage and the desire for revenge with understanding<sup>41</sup> even if there is condemnation.

Beyond acknowledgement of fact and responsibility is acknowledgement of the other: "of the right of the rival group to exist peacefully and its acceptance as a legitimate and equal partner with whom disagreements have to be resolved in non-violent ways." (Bar-Tal 2002, 19) This type of acknowledgement will be discussed under reconstruction, but, as will be seen, when the reconciliation is between groups who were not rivals but where one group committed gross human rights violations against another group, acknowledgement of the other will be very different.<sup>42</sup> There can be no partnership, let alone an equal one. There cannot even be recognition of the other when the other consists of those who intend, plan and execute a policy of exterminating another group and the group that was victimized. (I deliberately exclude those who simply did the killing.) Just as the victimizers withheld recognition of the legitimacy of the other group's continued existence, it is incumbent that the victims ensure that legitimacy is never given to those who are set on extermination of another. This is the difference between the treatment accorded *genocidaires* and those who perpetrate massive human rights violations. Under certain conditions, the latter can be acknowledged and recognized as members of civil society. However, to give recognition to *genocidaires* would entail giving recognition to their enterprise, thus undercutting the very foundations of liberal reconciliation – that two groups with differences can live side by side in proper respect for the other.

## B. Restorative Justice

Within the category of recollection, it is clear that, “Their sources of truth (evidence) are the stories of victims’ suffering without the necessary burden of legal proof or judgment.” (Humphrey 2003, 106) “Testimonies to suffering before tribunals are not aimed at securing justice but at constructing the victim as the foundation for moral and social reconstruction.” (Humphrey 2003, p. 107) Other commentators go further and not only fail to see any necessary link between the two categories, but find the mechanisms of recollection to be at odds with the interests in justice. “Blanket amnesty given early in reconciliation, as was attempted in Chile and implemented in Uruguay, severely limited the realization of justice.” (Long and Brecke 2003, 71)<sup>43</sup> In the name of expediency or good politics, the political leaders endorsed the compromise and toleration for a certain amount of injustice in the name of social peace. The same charge was made about the TRC in South Africa; the critics claimed the sacrifice of restorative justice to political expediency left a haunting legacy and undermined the rule of law.<sup>44</sup> Others, however, argue that the TRC did the most to restore respect for the rule of law in South Africa.<sup>45</sup>

The two categories clearly have different functions. “Truth commissions address the legacy of violence – trauma – as the basis for promoting national reconciliation, rather than prosecute perpetrators to pursue justice. Their sources of truth (evidence) are the stories of victims’ suffering without the necessary burden of legal proof or judgment. Individual testimonies also serve as alternative sources of ‘memory’ of events which had been expunged from official ‘memory’. The power of their words is not legal (at least only potentially and indirectly), but empathetic. The stories are supposed to move people collectively thereby diminishing the legacies of violence by sharing their effects. This sharing of the ‘truth’ of suffering is an act of moral implication and is supposed to engender *acknowledgement* (my italics) of collective responsibility.” (Humphrey 2003, p. 106) But the courts also render judgments of individual responsibility. And trials and restorative justice are considered by many to be essential aspects of reconciliation. Some even insist that *all* those who commit genocide and crimes against humanity must be indicted and not just the leaders.<sup>46</sup>

This brings up the issue of different degrees of criminal responsibility. The Gacaca courts in Rwanda distinguish between four levels of criminal responsibility:

- 1) in addition to notorious murderers characterized by excessive zeal and malice, this highest level of responsibility included the planners, organizers, instigators, supervisors and leaders who were in positions of authority to order or encourage others to commit genocidal crimes,
- 2) the perpetrators, conspirators or accomplices of intentional homicide who intended to kill, cause injury or committed other serious acts of violence;
- 3) the same depiction as 2 above but “without any intention of causing death”, in other words, criminal acts characterized, for example, as manslaughter rather than murder because these acts lacked the component of premeditation;
- 4) violators against property.<sup>47</sup>

If they are different categories with different purposes that are often at odds, when does one choose to adopt one mechanism and downplay the other? “International criminal tribunals are pursued where the state is either not strong enough, or lacks sufficient legitimacy, to conduct national trials, and when the consequences for the state and the international community are seen as too high to live with the impunity of perpetrators.” (Humphrey 2003, p. 105)

If, however, one opts for a judicial process instead of an effort at systematic recollection, one clearly sacrifices the function of truth seeking. The limitations of bringing out the historical truth in judicial trials can be found in Henry Rousso’s analysis of the Papon trial in France. “In the context of the Papon trial, nothing of this sort occurred. Most of the historians cited by the bar were not called (or only in very marginal ways were called) during the trial’s preparation – that is to say at a time when they would have had the leisure to examine and judge the archival material that made up the core of the prosecution’s case. They were cited as *witnesses* in the confines of criminal procedure, which requires that only the judges, the lawyers for the defense and for the civil plaintiffs, and those for the accused have access to the judicial dossier. This access is, in contrast, strictly prohibited to witnesses (even historian-witnesses)), who must testify under oath without being able to use written notes – all procedure(s) (sic!) in criminal courts resting in this case on the sacrosanct ‘oral character of argument’.” (Rousso 2003, 288) “They (the historical experts) testified, in other words, in a context that is quite removed from that in which historians normally work. As a result of this state of affairs, they found themselves in a very unnerving situation because they were at the mercy of retorts from the prosecution or from the lawyers, who themselves had at their disposal material from a dossier of several thousands of pages.” (Rousso 2003, 289) Of particular note was the role of Michel Bergés, a political scientist who had launched the Papon affair in 1980, helped the association of victims bring the suit on the basis of the archival documents that he had found, and was the only scholar who had a thorough knowledge of the legal dossier, and the only scholar who had detailed knowledge of how the prefecture of the Gironde functioned. However, by 1997 he had changed his mind about the case and Papon’s guilt, and appeared as a hostile witness for the prosecution and was called to the stand by the defense of the accused.

However, the functions of courts are not to establish the truth but to ensure that justice is done and the rule of law is restored. “Trials emphasise rights rather than suffering. They focus on the ‘weapon’, the origins of violence, rather than the ‘wound’, its effects. They establish not only what wrong was done but who was responsible and what punishment they should receive. By redressing the rights of individual victims, trials seek to reconstitute state political and legal authority by demonstrating that no-one is above (or below) the law.” (Humphrey 2003, p. 126)<sup>48</sup> In recognizing the rights of the individual, they abandon any concern with the suffering of that individual. Further, the trials are not intended to give justice to the victim but to restore the principle of justice to the community. Finally, the judicial rulings bring about closure in a way no inquiry into the truth can for they authoritatively rule out what Michael Ignatieff in a recent lecture in Toronto called ‘impermissible lies’.

In sum, the functions of recollection and restorative justice are different and complementary; they work through different mechanisms. While recollection is a necessary condition of fostering restorative justice, restorative justice may not and usually does not establish the truth. Courts however do define what are impermissible lies. Most important, they are concerned with reestablishing the rule of law.

### C. Redress

We said that redress had three dimensions - compensation for damages and harm done in the past (reparations), allocation of funds in the present for social transformation and institutional reforms, and shifting the focus in the future from power to the satisfaction of needs. The biggest difference between all these dimensions of redress is they shift the focus of restorative justice from the perpetrators of the crimes to reconstitute victims as beneficiaries. “Where the focus is on perpetrators, victims are necessarily defined as the minority of political activists; for the victimhood of the majority to be recognized, the focus has to shift from perpetrators to beneficiaries. The difference is this: whereas the focus of perpetrators fuels the demand for justice as criminal justice, that on beneficiaries shifts the focus to a notion of justice as social justice.”<sup>49</sup>

Redress does what neither the quest for truth nor the quest for legal justice can accomplish. Redress addresses the issue of social justice. To carry out redress, there must be a proper recollection of what occurred, who were the victimizers and who were the victims, and who gained the material benefits from that victimization. Further, the perpetrators must be held accountable. But these programs are insufficient to accomplish reconciliation unless there is a systematic effort to redress the material wrongs and move towards a system of social justice in the future.

The first dimension of redress is compensation or restitution to the victims. Some read this as a form of retroactive blackmail and a method of creating resentment among current citizens who were not responsible for committing the crimes in the first place.<sup>50</sup> But that is to miss the point. For they are *beneficiaries* of those crimes – perhaps through something as mundane as lower insurance rates. And the beneficiaries owe compensation to those who were deprived of their assets even if bear no criminal responsibility whatsoever. The issue is **not** to establish that they were complicit in the crimes<sup>51</sup> but only to ensure that they come some way to recognizing and offsetting their benefits from the expropriation of the labour and capital of those who were victimized.

Further, there is a feedback effect on recollection. Though documenting what was lost, by whom, and who were the beneficiaries are all preconditions for redress, redress itself is an instrument for reinforcing recollection and sets the condition for reconstruction by allowing recognition and the rewriting of history to move towards a shared enterprise. Further, while criminal justice works towards reinforcing general rules applicable to all, redress is concerned with particular victims and classes of victims. The universal is not only embodied, it is made particular. More than that, redress goes beyond

the either/or, the guilt/innocence polarities of the criminal justice system to point to ambiguities.<sup>52</sup>

Most importantly of all, redress, like restorative justice and recollection, is primarily future oriented. allocation of funds in the present for social transformation and institutional reforms, and shifting the focus in the future from power to the satisfaction of needs.

#### **D. Reconstruction**

With redress, the victim is perceived by himself and by others as a beneficiary and not just or no longer a victim. Hopefully, restorative justice has punished the perpetrators and helped reestablish the rule of law. And the process of recollection has not only provided what has happened and defined, through the legal system, impermissible lies, but has identified those responsible and obtained their acknowledgement. All of these are preconditions for the fourth aspect that entails mending both the communities and the hearts of those affected by the violence, particularly the victims. First there is the process of psycho-social healing through the release of deep seated hatreds and enmity without targeting the other. Though I will have to develop this thought elsewhere, basically this entails repentance in the sense of taking responsibility, a conception captured by the Hebrew term, *tshuva*, a conception I much prefer to forgiveness which has so many other connotations.

Second, the effort through the search for recollection to set the record straight, the trial record and the testimony of witnesses, and debates over redress have all contributed to strengthen the process of public discourse, but what is still required is a recognition through speech and acts that public deliberation is part of and, in fact, the culmination of the reconciliation process. Public discourse is not just telling stories about injustices in the past, it is not just about meting out justice to perpetrators of crimes, it is not just about engaging in debates concerning delivering social justice through reparations and turning victims into beneficiaries. All of these processes still entail fundamental divisions between the inquisitor and the testifier, between the prosecution and the defence, between the beneficiaries and the victims of past exploitation. There needs to be a discussion that includes everyone **and** that has a purpose related to some public action towards prevention in the future. It is this element that is absent in most efforts at reconciliation. It is this effort that is so necessary to complete the process of identity transformation, both of oneself and the other.<sup>53</sup> Both must become and be recognized as part of at least one common public. Further, by their word and their actions they must demonstrate to others that they are members of at least one community in common. Unless various sides to a violent conflict are brought together in an arena where they can engage in discussion and dialogue in a public way, reconciliation will remain incomplete. Such an occasion may but need not include expressions of forgiveness, but even when this occurs, the forgiveness is not an act of removing guilt, but must be one that entails establishing a new relationship that rules out the resort to violent behaviour to resolve differences.

Behaviourally, the process of forgiveness and reconciliation as described across many different disciplines invariably includes four phases. First, parties to a conflict must

recognize shame and anger from a perceived wrong, injustice, frustration, or injury. They must *acknowledge* the harm...One does not forget to forgive, one remembers and forgives. Second, forgiveness involves a changed understanding of oneself and of the other party to a conflict...Forgiving involves a self-transformation wherein the party sees itself as something other than a victim and achieves a more complete and balanced identity. Forgiveness is outwardly directed as well. Specifically, it requires constructing a new identity for the other, the enemy...Cognitively, it involves 'reframing' the other, 'separating the wrongdoer from the wrong which has been committed...the humanity of that person is acknowledged by those who have suffered...Third, the parties must forego the option of revenge, however natural, desirable, or justified. This forbearance does not require abandonment of all versions of punishment, redress for wrongs or injuries, or abandonment of justice, only willingness to break the cycle of injury and counterinjury. Retribution for a wrong must be less than total. Fourth, one or both parties make an offer that results in contact between them and a public expression of forgiveness, with the offer of a renewed but different relationship, what we call a reconciliation event. (Long and Brecke 2003, 29-30)

In this way, moral integrity is restored to everyone. Everyone was hurt by the violent conflict, some much more than others. But all shared in this hurt, even those responsible for crimes. But this is insufficient. For violent conflict not only damages individuals; it also damages communities. The process of reconciliation in the final phase must contribute to preservation and creativity of a community. "Acknowledgement of the moral integrity of an individual requires acknowledgement of how that individual can be damaged or hurt by past wrongs. It also requires acknowledgement of the value of the individual to the community in which he or she lives and how destruction of that community can also constitute an individual wrong." (Howard-Hassmann 2003, 193)

Bar-Tal (2002) defines complete reconciliation between past rivals as: "mutual recognition and acceptance, invested interests and goals in developing peaceful relations, mutual trust, positive attitudes as well as sensitivity and consideration of other party's needs and interests." (p. 18) Reconciliation thus involves changing the motives, goals, beliefs, attitudes and *emotions* in a society. Reconciliation is only moving towards completion where the societies involved develop a widely shared psychological repertoire that supports the denial of any resort to the use of violence to settle differences. Any words or actions that reinforce adherence to the conflictive goals, maintain the conflict, and delegitimize the opponent, negate efforts at reconciliation. Of special importance in this repertoire are widely shared beliefs (called societal beliefs), such as beliefs in human rights, in the rule of law, in respect for all individuals regardless of race, colour or creed, and in *civil* society in both the literal and the political theory senses. These beliefs must not only be cognitive; they must be inscribed in the bodies of its members, in their emotional hearts so that they are not governed in their behaviour by fear and hatred, by paranoia and aggression. Only then will the process of reconciliation be complete.

---

<sup>1</sup> Reconciliation not only refers to overcoming conflicts between human individuals. Frans de Wall, a leading primatologist, has depicted nonhuman primates engaging in non-aggressive reunions known as 'reconciliation'. (Cf. De Waal, Frans, 1989. *Peacemaking among Primates*. Cambridge: Harvard University Press.)

<sup>2</sup> Carol Prager, in the opening sentence of her introduction to an edited volume on reconciliation, says: "The twentieth century's tens of millions of mass human rights abuses (increasingly associated at century's end

---

with international interventions to stop them and to rebuild political communities afterward) have led to an intense focus on reconciliation.” Trudy Grovier, ed. 2002. *Dilemmas of Reconciliation*. Waterloo: Wilfred Laurier University Press.

<sup>3</sup> In contrast to the one-sided and unidirectional nature of genocide and massive violations of human rights, “A war ( a ‘war event’) is an occurrence of purposive and lethal violence among two or more social groups pursuing conflicting political goals that results in fatalities with at least one belligerent group organized under the command of authoritative leadership.” Def. of LORANOW project: Claudio Cioffi-Revilla, “Origins of War and Politics,” *International Studies Quarterly* 40, 1996, 8.

<sup>4</sup> The Rahanweyn Resistance Army (RRA) governs the town of Baidoa and the Bay and Baikol regions in southern Somalia. In early October 2003, the Chairman, Hasan Muhammad Nur "Shatigadud", reconciled with one of his rivals, Shaykh Adan Madobe, a deputy with whom he had split in July 2002, a split that was followed by fierce inter-clan fighting resulting in the town of Baidoa changing hands several times and forcing many of the local population to flee. In their reconciliation, the two parties agreed on a ceasefire and a cessation of hostilities. However, Shatigadud did not succeed in reconciling with his other deputy and rival, Muhammad Ibrahim Habsade. On 9 October 2003, as a result of intra-clan clashes between the two sides, six people were reported to have been killed in fighting at Dambal near the Baldoa airport. Nowhere in the accounts of reconciliation or non-reconciliation are there any suggestions of accurately recollecting what happened and of acknowledging responsibility. There is no suggestion that anyone will be tried before a criminal court. There is no suggestion of redress and no indication that there is any need to reconstruct identities or collective narratives. Yet a reconciliation following violent conflict clearly took place in one case and not in the other. This is ‘thin’ reconciliation in contrast to the ‘thick’ reconciliation analyzed herein. Herbst (2000) contrasts reconciliation as nation-building (strong or what I call ‘thick’ reconciliation) with reconciliation as forgiveness or weak reconciliation. As will become clear, I suggest that forgiveness need not be associated with either thick or thin reconciliation.

<sup>5</sup> “(R)econciliation is part of a process of forgiveness, transforming certain emotions (moving from anger to affinity) and transcending certain beliefs about oneself and the other, that opens the possibility of new, beneficial relations.” (Long and Brecke 2003, 23) I do not have the space to provide an extended discussion of forgiveness here. What I can say is that there are many meanings to forgiveness, some of which parallel the elements we parse for reconciliation. Thus, forgiveness can mean apologies as requests for forgiveness that are acknowledgements of responsibility, as when President Clinton uttered his apology for America’s role in the genocide in Rwanda, forgiveness as an amnesty from criminal prosecution when a perpetrator sincerely owns up to a crime committed and his responsibility for it, forgiveness of debts owed by countries for arms supplied by outsiders to former regimes that used those arms against its own people, and forgiveness as self-transformation in denigrating some emotions, such as rage and resentment, and enhancing others, such as trust and hope, in a process of transcending some inherited beliefs about oneself and an other in the process of establishing a new relationship. Nevertheless, there are others that emphasize contrition and confession in the traditional Christian sense that suggest constant self-revelation is necessary if sinners are not to be swallowed by the forces of evil. Such interpretations often find a necessary connection between forgiveness and forgetting, though most modern Christian religious thinkers have distanced themselves from such conceptions. (Cf. many of the essays in Helmick and Petersen 2001 or Joanna North’s essay in the volume she co-edited with Robert Enright in 1998 in which she attempts (mistakenly I believe) to position forgiveness as a precondition of reclaiming self-respect.) That is why I prefer the Hebrew term *tshuva*, which is repentance, but is an action that in its essence defines oneself as an individual who assumes responsibility for his or herself and not as fundamentally a sinner. See Peter Digeser (2001) who explores various equivocal meanings of forgiveness and offers a political theoretical account that tries to separate his political conception from the overload of psychological and religious meanings. In my view, he converts the meaning of forgiveness much closer to the Hebrew conception of *tshuva* as forgiveness becomes more closely associated with public self-disclosure in speech-acts and acceptance of responsibility, legal and social justice and the entailment of concrete action consistent with the words uttered. There remains a difference, however. *Tshuva* is primarily self-directed and is perceived as a pre-condition for true forgiveness of the other. Forgiveness is not the pre-condition for eliminating bitterness and resentment and creating a foundation for intimacy. Rather, eliminating an attitude of being unforgiving in oneself is a condition of forgiving. An account connecting repentance to forgiveness was attempted by Haber (1991) who, however, argued that forgiveness is a virtue when it is permitted by the

principles of morality for moral reason's that make the *wrongdoer's* repentance a precondition. Forgiveness is primarily other directed, especially when the Christian motifs are bracketed and discarded. I contend that there can be no true forgiveness of the other without *tshuva*, and that Digeser's analysis, however much I admire it, only goes half way. But such a discussion requires a more extended analysis.

<sup>6</sup> "It is important to distinguish between reconciliation events and reconciliation. The former are a proxy indicator of reconciliation. We used them to measure potential reconciliations because they are *measurable* indicators of possible reconciliations. Reconciliation events can be identified in the historical record, whereas reconciliation (of this type) ultimately occurs within the minds of many, perhaps most, individuals in a society and is difficult to measure." (Long and Brecke 2003, 7) "(W)e define a reconciliation event as one that includes the following elements: direct physical contact or proximity between opponents, usually senior representatives of respective factions; a public ceremony accompanied by substantial publicity or media attention that relays the event to the wider national society; and ritualistic or symbolic behavior that indicates the parties consider the dispute resolved and that more amicable relations are expected to follow." (Long and Brecke 2003, 6)

<sup>7</sup> "(T)he best strategy for breaking a pattern of hostile interactions is by sending signals that provide a measure of commitment to the pursuit of improved relations. Reconciliation events or gestures are particularly effective forms of this type of signal because they are almost always politically costly to leaders of opposing sides, and costly signals are more reliable determinants of a leader's true intentions for improved relations than low-cost or cost-free signals. Reconciliation initiatives impose costs because of their 'audience effect'. Leaders do not conduct policy in isolation, but before domestic and international audiences. Concern with adverse political reaction to a reconciliation gesture toward a former adversary, or with political humiliation should a leader decide to back down from an agreement if it fails to produce the intended effects or if it produces adverse reactions in key third-party actors, are important audience costs associated with reconciliation." (Long and Brecke 2003, 18)

<sup>8</sup> Olick and Coughlin argue that the various changing institutional mechanisms for dealing with "mistakes" of the past – restitution, reparation, apologies, redress, historical inquiry, trials are but reflections of the consciousness of our time rather than abstractly justified, historically necessitated or simply a strategic option. Similarly, Cairns in the same volume depicts these changes to be the product of "a broad change in human sensibility" (in Torpey 1993, p. 67).

<sup>9</sup> There is wide agreement that the political vision of the political results of reconciliation should be clearly spelled out. "In Somalia, there was no explicit vision of how reconciliation should proceed. The United States formally envisioned its mission as being short and limited to opening supply lines so that it would not have to become involved in Somali politics. Nor did the UN have a clear roadmap as to how reconciliation was to occur." (Clarke and Herbst 1997, 246) Further, in defining that political end, a number of factors have to be taken into account, including regional factors and the domestic culture and institutions available as a foundation. Some states are not even strong enough to pursue the path of reconciliation. "(T)he Somali crisis presented domestic protagonists and international peacemakers with unique political dilemmas within a menu of very unpalatable options, all of which posed a high probability of failure." (Menkhaus 1997, 43) The challenges included:

- 1) A crisis of legitimate authority;
- 2) Internationally sponsored peace conferences perceived by Somali leaders as tools for enhancing their status rather than promoting peacemaking;
- 3) Powerful vested interests in continued instability, conflict and anarchy;
- 4) Somali political culture that characterizes conflict management as an ongoing process rather than a discrete event;
- 5) Traditional conflict management practices only effective at the local level;
- 6) Grassroots approaches that produced coalitions and squeezed out some parties;
- 7) The contradiction between the UN's role as an enforcer (requiring impartiality) and mediator (requiring neutrality);
- 8) The revival of local and regional governments exacerbated communal strife;
- 9) Economic scarcity.

<sup>10</sup> Irwin Cotler, the internationally renowned human rights lawyer and currently member of the Canadian parliament, has been one of the most vigorous proponents of the view that reconciliation must be addressed to the future and not just the past. "(B)oth as a fidelity to international law and fidelity to reconciliation"



what is needed “is a culture of respect in place of a culture of contempt – a culture of human rights in place of a culture of hate – inspired by, and anchored in, a set of foundational jurisprudential principles” as found in international and such domestic law as the legal code in Canada. Further, “crimes of indifference” must be recognized so that “neutrality in the face of evil – whether of individuals or states – is acquiescence in, if not complicity with, evil itself.” A system of early warning and early response must be developed. And the duty and not just the right to intervene in cases of gross human rights violations must be incorporated in international law authorized by a set of updated just law principles. Cotler is an ardent supporter of an international criminal court for it provides a “wake-up call and a warning to criminal human rights violators everywhere” that there “will be no safe havens, no base for sanctuary for the enemies of humankind.” Similarly, in addressing the same 2002 Stockholm conference, Jean de Dieu Mucyo, the Rwandan Minister of Justice, described national reconciliation as “a great challenge” intended to bring the Rwandan people together in the “triumph of the idea of the nation, not a regime based, as in the past, on notions of ethnic groups.” (Stockholm 2002, 88)

<sup>11</sup> *The Odyssey of Homer*, Samuel Butler translation, New York: Walter J. Black, 1944, p. 80.

<sup>12</sup> Though Plato accused Periclean participatory democracy of being unreasonable and ill-informed in making its decisions because it lacked knowledge of the law and based its decisions on imaginative constructions of history, he too endorsed keeping Athens harmonious by excluding aliens from membership. But he went further. Unity depended on honouring and copying his god. *Phaedrus*, 252d.

<sup>13</sup> “At their height in the nineteenth century, European states supported a new kind of memory – a homogeneous memory of the nation – at the same time as this new kind of memory made possible a new kind of state. At this point, the past became a central occupation and preoccupation, not only providing substance for shared allegiance to the state but legitimating the ‘empty homogeneous time’ of the state over less ‘progressive’ temporalities.” (Olick and Coughlin 2003, 54)

<sup>14</sup> For Plato, the pathology of the polis when it is at war with itself is injustice! What is justice? It is unity. How is unity obtained? In two ways: first, the polis must be kept homogeneous in terms of ethnicity; secondly, the relations between the different classes must be kept in a precise proportion to one another. In the *Philebus*, Socrates says, “That we find fixity, purity, truth, and what we have called perfect clarity, either in those things that are always, unchanged, unaltered, and free of all admixtures.” (Hackforth, R. 1945. *Plato’s Examination of Pleasure: A Translation of the Philebus*, included in *Collected Dialogues*, eds. Edith Hamilton and Huntington Cairns, New York: Random House, 1961, p. 1141: 59c.) And the highest purity was the release of the pure soul from the contaminations of the heterogenous and contingent body. This is as true of the body politic as it is of the individual human body. According to Plato as articulated in the *Timaeus* (pp. 9-10), a people’s character is shaped by geography that is natural to that nation. Disorder and disease are due to unlikeness and heterogeneity. A healthy polis has a homogeneous population. However, any political population is differentiated in another way. People are divided into classes. For Plato, each class has its place and its proportion relative to the overall whole. To avoid civil war, they must be ruled by a unified mind. The citizens must love one another as friends and factional strife excised from the land. As Socrates says at the beginning of *The Republic*, “For factions, Thrasymachus, are the outcome of injustice, and hatreds and internecine conflicts, but justice brings oneness of mind and love” (I:351d, tr. Paul Shorey). *Paideia*, the teaching of one’s role and function in a harmonious society, is the prerequisite of one- or single-mindedness. When the ruling class loses its unity, when it divides into factions, when friendship is shattered among them, then factions are bred that lead to civil war.

<sup>15</sup> Demokritos taught that envy, the desire to possess what belonged to another, was the starting point of conflict. In a similar vein, Thucydides wrote that, “In this crisis the life in the city [Corcyra] was in utter disorder; and human nature which is accustomed to do wrong, even in defiance of the laws, now trampled them under foot and delighted to show that it is ungovernable in passion, uncontrollable by justice and hostile to all superiors. For they would not have set revenge above religion and profit above innocence if envy had not exercised a fatal power (my italics). In revenging themselves on others, men claim the right to annul in advance those common laws of humanity to which every man trusts for his own hope of deliverance from calamities, and to leave no recourse against the day when he may be in danger and in need of their support.” (*The Peloponnesian Wars*, tr. Benjamin Jowett III:84) In the process, even the continuity of language is inverted as populist demagogues take advantage of the chaos and use the cover of populism to invert meaning. In the process, language and thought becomes inverted just as George Orwell described in 1984. In the enormity of the vengeance fuelled by envy, conventional meanings of words are reversed.

Irrational daring and self-sacrifice become acts of courage. If successful, the perpetrator is credited with being shrewd and clever. If caught, even more noble. Prudence is cowardice. Sound sense is unmanly weakness. Those dedicated to thought and reflection are consigned to the ash heap of history as those incapable of action. Concern for safety is a pretext for evasion. The embrace of violence is the only guarantor of trust. Opponents of the use of violence become suspect of collaborating with the enemy and undermining the will of the radicals. To engage in dialogue, to listen to the other, to make any effort to make plots and subterfuge superfluous is to succumb to fear of the enemy. Strike first. Strike hard. Strike everywhere against your enemies without discrimination. And most of all incite others to resort to violence. (op. cit.) Thus, thoughts are not used to determine which deeds are best. Words are not used to explain thoughts but to rally a party. Words are only rhetoric used arbitrarily to justify deeds. Logos becomes totally corrupted. Words are cut off from established meaning to become weapons of war rather than carriers of thought and values to enable behaviour to be anticipated. Observers witnessing the fray in the name of neutrality often opt out of the responsibility of using language with precision. In avoiding the language of either side, they join the anti-logos relativism of the extremists. For, after all, isn't one man's terrorist another's freedom fighter? Chaos reigns in the realm of thought as the unbounded, the arbitrary, the unpredictable become the norm of everyday life and death as a society slips into chaos. (Ibid, 82) In this thesis, people resent what others owned – wealth, power; suicide bombers are the products of resentment and despair. Redistribute the power and the wealth, and then we will see the end of fratricidal strife. The answer to conflict is a material and an external one that requires no confessions, no owning up to responsibility for past actions, no psychotherapeutic measures. If either preservation of the inherited established order or radical change in that order through the redistribution of wealth and power to the people are seen as the answers to conflict, then the processes of reconciliation we stress are not required. What is needed is eliminating the foreign element that has intruded itself into the natural polis that appears to monopolize all wealth and power.

<sup>16</sup> Examples of these include: the US and Canadian Inquiries into the Forced Relocation of Japanese citizens during WWII (in the USA, the 1982 Commission on War-Time Relocation and Internment of Citizens); the 1991-96 Canadian Royal Commission on Aboriginal Peoples; the 1994 US Advisory Committee on Human Radiation Experiments; the Canadian Mount Cashel Inquiry in Newfoundland, and the Canadian federal government inquiry and trials re the abuse of aboriginal children in the charge of the Christian Brethren or of aboriginal children in schools run by various Christian religious denominations; the 1996-7 Australian Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families.

<sup>17</sup> As The President of Germany, Richard von Weizsäcker, said in his famous speech in the Bundestag on 8 May 1985, “There can be no reconciliation without remembrance.”

<sup>18</sup> Quoted from a South African researcher's report in Hayner (2001), 157.

<sup>19</sup> I refer here to recognition of the truth by the society in general in which the atrocities occurred, but particularly by those who shared responsibility for the atrocity even if only by providing political support to the perpetrators. The latter recognition entails, at a minimum, acknowledgement; it need not entail an apology or even an admission of guilt.

<sup>20</sup> Nancy Wood. 1999. “Memory on Trial in Contemporary France,” *History & Memory* 11:1, Spring/Summer, p. 66.

<sup>21</sup> For the South African Truth and Reconciliation Commission, “a just and moral appraisal of the past is the true life-blood of reconciliation.” (Asmal, Kader, Louise Asmal and Ronald Suresh Roberts (1996, 1997) *Reconciliation Through Truth: A reckoning of Apartheid's Criminal Governance*. New York: St. Martin's Press, 14) In the SA TRC, truth was the path to justice and true justice was equated with truth, both factual and moral. The initiators of the RTC in South Africa rejected the use of the judicial option for dealing with the past (p. 18) as a primary instrument, though the threat of legal trials were used as a stimulus to foster truth-telling. Section 1(1)(XIV) of the Promotion of National Unity and Reconciliation Act did, however, allow for recommendations on reparations.

<sup>22</sup> This is more easily accomplished in truth commissions than in trials as the defenders of the South African TRC have correctly argued. Some ironies occur in trying to bring out the truth in judicial proceedings. Nancy Wood (1999. “Memory on Trial in Contemporary France,” *History & Memory* 11:1, Spring/Summer) tells the story of Michel Slitinsky who had been the one most assiduous in bringing Papon to trial for his own father's transport and death in Auschwitz in an effort “to personalize responsibility for

his father's fate" was consigned to irrelevancy by the court when documents were uncovered that showed Papon had intervened to save his sister.

<sup>23</sup> "The primary aim of trials after mass atrocity is to re-establish the rule of law by establishing truth and justice about the past. Trials are an important mechanism to re-establish the authority of law and thereby engender people's trust and confidence in national institutions. Trials pursue justice through the persecution and punishment of perpetrators with reference to a moral community, usually understood to be the national community defined by the legal sovereignty of the state. But where mass atrocity has caused a radical breakdown of national community and law, the burden of trials is not just restorative but constitutive of national law." (Humphrey 2003, p. 125)

<sup>24</sup> Karl Jaspers was one of the first Germans after the war to insist and push for German reparations, not simply for making amends, but for assuming responsibility and helping create the new German. Cf. *The Question of German Guilt*, tr. E.B. Ashton. New York: Fordham University press, 2002; originally published in 1946 *Die Schuldfrage: Von der politischen Haftung Deutschlands*. Munich: Piper. Chancellor Konrad Adenauer of West Germany announced in the Bundestag on 27 September 1951 that the crimes committed in the name of the German people "require moral and material restitution (Wiedergutmachung)." In my language, I use restitution only in the material sense following somewhat the use of the term "restitution" of Elazar Barkan. (*The Guilt of Nations: Restitution and Negotiating Historical Injustices*. New York: W.W. Norton, 2000). See also John Torpey, *Politics and the Past*, forthcoming. John uses 'restitution' and "restoration" in the opposite way to the one I do. Restitution refers to the narrower category of making amends through returning specific items, while reparations include a broader range of activities so that, in contrast to restitution, reparations point to attempts to make up for "egregiously and unjustly violated selves and for squandered life's chances." (p. 3) I refer this account of "moral" restitution as reconciliation. For another account of the connection between reparations and reconciliation, cf. Wole Soyinka. 1999. *The Burden of Memory: The Muse of Forgiveness*. New York: Oxford University Press. It should be noted that in Digeser's analysis of forgiveness as a political conception (2001), to which I am largely sympathetic, the stress is placed on the receiver of the compensation who, in accepting payment, releases the debt owed by the individual or society that perpetrated the crime.

<sup>25</sup> These can be systemic or individual.

<sup>26</sup> If the Hebrew word, *tshuva* was more widely known I would use it for it means repentance in the sense of taking responsibility.

<sup>27</sup> In Dionisio Babo-Soares paper, "Nahe Bitti: The Philosophy and Process of Grassroots Reconciliation (and Justice) in East Timor," first presented at the Christen Michelsen Institute in Bergen, Norway where a version of this paper was first presented, this sense of reconciliation seems to be captured by *nahe biti* characterized by Babo-Soares as "part of a grand process that aims to link past and the future, bringing society into a state of social stability where peace, tranquility and honesty prevail." (p. 1)

<sup>28</sup> This was certainly the dictum of the father of modern German historiography, Leopold von Ranke. Cf. his 1824 volume, *History of the Roman and German Peoples – Geschichte der romanischen and germanischen Völker*. However, though this element of Ranke is stressed by English empirical historians, Ranke, in fact, saw that it was equally necessary to show how history evolved (*wie es eigentlich gewesen*) and moved towards the present as the ground for the future. (Cf. Peter Hanns Reill. 1975. *The German Enlightenment and the Rise of Historicism*. Berkeley/Los Angeles: University of California Press, 39.) Hannah Arendt famously called Ranke and his heirs "eunuchs" because they were impotent because of their obsession with facts and their quest for objectivity in contrast with her meditations on the ability to resist reality. (Cf. Judith Sklar's essay on "'Hannah Arendt as Pariah," chapter 20 in her collected essays published in 1998 entitled: *Political Thought & Political Thinkers*, ed Stanley Hoffmann, Chicago: University of Chicago Press, 367.) On the other hand, in a letter to her good friend Mary McCarthy, Arendt wrote that her Report on the Eichmann trial contained "only facts" and no ideas with a few conclusions. (20 September 1963, published in *Between Friends*, p. 148)

<sup>29</sup> Cf. Hannah Arendt. 1958. *The Human Condition*. Chicago: University of Chicago Press, 208. Arendt distrusted oral testimony. Memories failed or were distorted by subsequent events. Documents were more reliable. They were not variable when subjected to examination.

<sup>30</sup> Hannah Arendt. 1971.1978. *The Life of the Mind*. New York: Harcourt Brace Jovanovich, p. 27. In this analysis, this will probably be the only place in which I quote Arendt approvingly.

<sup>31</sup> Cf. Lawrence L. Langer. 1991. *Holocaust Testimonies: The Ruins of Memory* (New Haven: Yale University Press) for a discussion and comparison of oral and written testimony.

<sup>32</sup> Michael Bernard-Donals and Richard Glejzer. 2001. *Between Witness and Testimony: The Holocaust and the Limits of Representation*. Albany: SUNY Press, p. 61.

<sup>33</sup> Hannah Arendt has a very different take on writers of fiction, historians, and truth. “The political function of the storyteller – historian or novelist – is to teach acceptance of things as they are. Out of this acceptance, which can also be called truthfulness, arises the faculty of judgment” *Between Past and Future*. New York: Viking Press, 1961, 262). Thus, for Arendt, there is fundamentally no essential difference between the writer of fiction and the historian. Further, the orientation of both of them is towards the past, or, at most, the present, for they teach acceptance of what cannot be changed rather than using memory to construct the future. Finally, true to the moralist that she was, truth is not about drawing limits to prevent impermissible lies about particular events and actions to be perpetuated, but the resignation towards the past is the universal Truth taught by both novelists and historians. Only with such stoic detachment and lack of empathy can one pronounce from on high one’s moral judgments. As Judith Sklar commented on the articles that appeared in *The New Yorker* that would make up her Eichmann book, they “displayed an extraordinary ignorance. Arendt generalized wildly about the infinitely complex and diverse communities of Eastern Europe, about whose history and structure she knew absolutely nothing.” “Hannah Arendt as Pariah,” 1998. in *Political Thought & Political Thinkers*, ed Stanley Hoffmann, Chicago: University of Chicago Press, 372-3.

<sup>34</sup> “Remembering, then is also a process of forgetting. It is simultaneously constructing some subjectivities and doing violence to others.” (Taylor 1994:200). “Where individuals have hidden their pain from themselves what is produced as testimony is a highly filtered account of the past. Testimony to trauma then involves individual recovery of memory about the past, regaining voice and re-establishing self-identity through narration. However, the very act of narration itself can be culturally understood as a social space created to defend against terror.” (Canclini 1995). Narrative fills the space of terror to populate it, to create meaning against the abject void (Taussig 1992).” (p. 112)

<sup>35</sup> Cf. Hayden White. 1973. *Metahistory: The Historical Imagination in Nineteenth-Century Europe*. Baltimore: Johns Hopkins University Press.

<sup>36</sup> “Individual testimonies also serve as alternative sources of ‘memory’ of events which had been expunged from official ‘memory’.” (Humphrey 2003, p. 106)

<sup>37</sup> Cairns (2003) in reference to the *Report of the Royal Commission on Aboriginal Peoples (1996)* – The RCAP Report – states that it was an attempt to recognize that “Rights that Indian peoples thought were protected by treaties were ignored or trivialized, and reserve lands were reduced to the benefit of the settler majority.” (p. 79) based on “a desire to get certain historical facts on record, and in effect write history from below – from the perspective of the subjugated and maltreated...one component of coming to terms with the past is a revised understanding of what happened in the past...the RCAP Report was also designed to be a major state paper to facilitate the harmonious co-existence of Aboriginal and non-Aboriginal peoples in a revised Canada based on a multinational vision.” The RCAP Report “argued for a public apology as part of a new Royal Proclamation leading to reconciliation and rapprochement based on a ‘great cleansing of the wounds of the past’.” Cairns also insisted that the need for healing is a recurrent theme.

<sup>38</sup> Annette Wieviorka. 1998. *L’ère du Témoin (The Era of Testimony)*, Paris: Pion. I am indebted to my student, Sarah Clift for bringing this book to my attention and even for her translations of part of the text. In fact, much of this section was written as a response to her forthcoming article, “Testimony in the Age of its Technological Reproducibility,” forthcoming.

<sup>39</sup> “Appropriate memorialisation should bring people together in common grief, give voice to victims and provide educational structures for post-atrocity societies. They should be shared and allow for dynamic narrative rather than closed exegesis...public recognition of the victims’ lives is essential, as without this neither reconciliation, education nor even basic communication between survivors and the society in which they live is ever going to be meaningful.” (Humphrey 2003, p. 211)

<sup>40</sup> Bar-Tal (2002) defined an apology as a “formal acceptance of responsibility for the misdeeds during the conflict and an appeal to the victims for forgiveness.” (p. 21) and leads to allowing the victim to be healed and forgive.

<sup>41</sup> “(R)ecconciliation occurs when shame or anger that often lead to aggression or a desire for revenge are superseded by a different emotive and cognitive path – empathy and a desire for affiliation. Although each of these terms is much debated in psychology and in other fields, for our purposes, anger can be understood as a strong emotion or experiential stage ranging from irritation to fury that occurs in response to a real or imagined shame, frustration, threat, or injustice; aggression is an impulse to hurt as a possible response to anger; and revenge is a more deliberate form of aggression. Empathy implies a realistic understanding resulting from feeling with (not for) another, and affiliation is a basic human motivation, a desire for belonging with another, even if only to enhance one’s own chances for survival.” (Long and Brecke 2003, 28)

<sup>42</sup> Scholars such as Long and Brecke concentrate on reconciliation as a *mutual* conciliatory accommodation between former antagonists and, thereby, do not recognize that most cases of reconciliation commissions apply to victims and victimizers rather than parties in a conflict situation. Further, in victim/victimizer situations, the reconciliation is on a society-wide basis rather than between the victimizer and the victim.

<sup>43</sup> Chile: given the constraints that Pinochet (and, hence, the military) would not be bound by the rule of law if the law was used to prosecute members of the military, and given that the law itself barred prosecution for crimes committed when the military was consolidating its power, “extensive truth telling, general attribution of blame, and government acceptance of the findings may have been the least unsatisfactory way of pursuing truth, a partial redefinition of social identities, and justice in the Chilean context.” (Long and Brecke 2003, 50)

<sup>44</sup> Cf. Graeme Simpson, Director of the Centre for the Study of Violence and Reconciliation, South Africa, for his account of the limitations of the TRC as a restorative justice mechanism and the need to deal the changing patterns of violence and social conflict that are the heritage of those limitations. (Stockholm 2002, “‘Uncivil Society’: Challenges for reconciliation and justice in South Africa,” (46-50) where he points out how the old political narratives cleansed both liberation politics and state violence of the criminal pathologies that were then prevalent and which criminalized politics and politicized crime and, in turn, haunt South Africa today.

<sup>45</sup> “The TRC, although criticized by many and subjected to intense media scrutiny, must be credited with fortifying political stability by reorienting the country’s moral climate and establishing new respect for the rule of law and human rights.” Long and Brecke 2003, 61)

<sup>46</sup> In September of 2003, the Security Council provided the International Criminal Tribunal for Rwanda (ICTR) with its own prosecutor and additional judges. The International Crisis Group issued a memorandum (23 September 2003) arguing that the ICTR had to proceed with its indictment of Rwandan Patriotic Army officers if the Rwandan government failed to do so “because reconciliation in Rwanda ultimately requires that *all* (my italics) who committed terrible crimes in 1994 have their day in court.”

<sup>47</sup> Cf. Jean de Dieu Mucyo, the Rwandan Minister of Justice, Stockholm 2002, 89.

<sup>48</sup> “Closure is achieved through trial outcomes and political decisions, which together seek to exile the past and those who had power in it. The political priority of national trials is to re-establish the principle of justice and authority of the law rather than to achieve individual justice for the many victims who, as a consequence of the selectivity of the prosecution, remain unrecognized, unreconciled and uncompensated.” (Humphrey 2003, p. 132)

<sup>49</sup> Mahmood Mamdani “Degrees of Reconciliation and Forms of Justice: Making Sense of the African Experience,” paper presented at the conference, “Justice or Reconciliation?” at the Center for International Studies, University of Chicago, April 25-6, 1997, p. 6: quoted in Hayner (2001) 164 and Torpey (2003) 10.

<sup>50</sup> “The idea of individual payments raises eyebrows among those potentially responsible for the resulting tax burden. Some of the estimates of what would be owed for back wages, lost opportunities, and the like are, not surprisingly, astronomical sums.” (Torpey 2003, 19)

<sup>51</sup> For example, the OAU in its 2000 special report stated that, “The international community must be made to understand the need for reparations for its complicity in the calamities of the past decade.” (Summary Report written by Gerry Caplan, p. 68) But this confuses criminal responsibility – which the larger community does not share – with benefits. The function of redress is to even the playing field by recognizing and reconstituting victims as beneficiaries and by asking other unacknowledged beneficiaries to recognize their gains and make some restitution..

<sup>52</sup> “This interaction between perpetrator and victim is a new form of political negotiation that enables the rewriting of memory and historical identity in ways that can be shared by both. Instead of categorizing all

---

cases according to a certain universal guideline, the discourse depends on the specific interactions in each case. Instead of seeing the increased role of victimization as a risk, the discourse of restitution underscores the opportunities and ambivalence embedded in this novel form of politics.” (Cairns 2003, 93) Cairns was writing about the compensation owed to the aboriginal peoples, particularly to those forced to attend residential schools and often subjected to abuse and even sexually criminal acts. For accounts of cultural crimes against the aboriginal peoples of Canada in terms of the treatment of aboriginal school children, see Miller (1996) and Milloy (1999).

<sup>53</sup> “Evidence of redefinition of parties to a conflict whereby the narrow definition of victim and perpetrator or repressor and insurgent are replaced with a new sense of self and other that makes a new relationship possible appears throughout cases of reconciliation.” (Long and Brecke 2003, 69)